

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

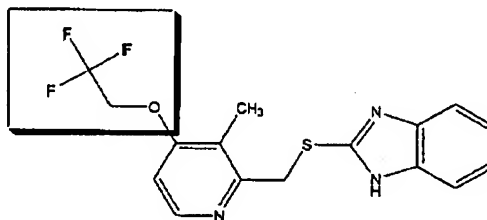
Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

### REMARKS/ARGUMENTS

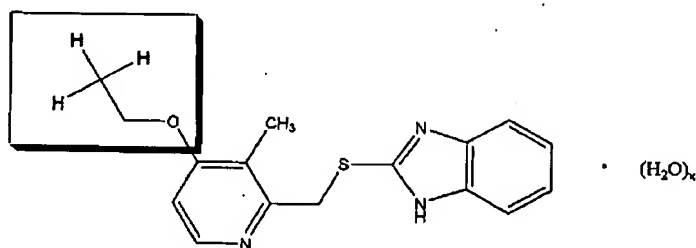
Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

At the outset, Applicants wish to thank Examiner Morris for the exchange of messages on November 6-7, 2007. On November 6, 2007, the undersigned left Examiner Morris a telephone message requesting an interview and notifying Examiner Morris that the undersigned had sent her a fax, which is reproduced below:

#### Compound of Hashimoto/Kotar-Jordan



#### Closest Claimed Compound



The Hashimoto/Kotar-Jordan compound has  $\text{CF}_3\text{CH}_2\text{O}-$  where the closest claimed compound has  $\text{CH}_3\text{CH}_2\text{O}-$ . The definition of  $\text{R}^2$  in the instant claims does *not* embrace fluoroalkoxy generally or  $\text{CF}_3\text{CH}_2\text{O}-$  specifically.

Examiner Morris then left the undersigned a telephone message on November 7, 2007, in which she indicated that she had considered the fax, and was now in agreement that the prior art compounds of Hashimoto and Kotar-Jordan are different from those instantly claimed.

In view of the exchange of messages, Applicants now believe, as will be explained in greater detail below, that the Examiner may be willing to allow the instant application. Therefore, Applicants have amended the claims above to correct a typographical error in claim 4 and to place withdrawn claims 5-13 in a form suitable to facilitate immediate rejoinder. Also, claims 14-16 have been canceled without prejudice. In the event that claims 1-4 are allowed, Applicants now formally request that claims 5-13 be rejoined and allowed as well.

In view of the fact that the amendments above only correct a minor typographical error in claim 4, cancel claims and place the nonelected subject matter in condition for immediate rejoinder and allowance, and further in view of the fact that the prior art rejections are in error, Applicants respectfully submit that the Examiner should enter and consider this amendment, and that no stringent showing under 37 CFR § 1.116(b) is required. An early notice that this amendment has been entered and considered is, therefore, earnestly solicited.

Turning to the substantive issues, claims 1-4 and 14-16 were rejected under 35 USC § 102(a) and/or (b) as being anticipated by Hashimoto et al. ("Hashimoto") and Kotar-Jordan et al. ("Kotar-Jordan"). In response, Applicants point out that, as the fax reproduced above makes clear, the compound of the two references is *different* from the instant compounds. The reference compound has a trifluoroethoxy group on the pyridinyl ring, but such substitution is not permitted in the instant claims. The closest the claimed compounds come is ethoxy, which is not the same. Accordingly, the references do not anticipate the instant claims.

Claims 1-4 and 14-16 were also rejected under 35 USC § 103(a) as being obvious over

Hashimoto and Kotar-Jordan in view of Brittain et al. ("Brittain"), Muzaffar et al. ("Muzaffar"), the US Pharmacopia and the Concise Encyclopedia of Chemistry. In response, Applicants point out that this rejection was premised on the Examiner's belief that Hashimoto and Kotar-Jordan disclosed a compound that anticipated the instant claims. Thus, the secondary references are all cited to show the possibility that compounds can exist in different crystalline forms. However, because Hashimoto and Kotar-Jordan teach a compound that is different from the instant compound, even if the Hashimoto and Kotar-Jordan compound could exist in a different crystalline form, it would never be identical to the instant compound and this deficiency is not remedied by the secondary references. Accordingly, the cited combination of references does not render the claimed compounds *prima facie* obvious.

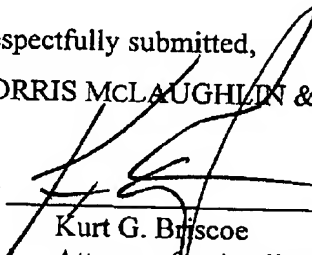
Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,  
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Page 9